IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IMPERIAL ZINC CORP., an Illinois corporation, individually and on behalf of all other creditors similarly situated, Plaintiff, vs. ENGINEERED PRODUCTS INDUSTRIES, L.L.C., a Missouri limited liability company, d/b/a St. Clair Die Casting, and EFR, L.L.C., Defendants.	)	Case No. **Jury Trial Requested**

CLASS ACTION COMPLAINT

Imperial Zinc Corp. ("Plaintiff" or "Imperial"), individually and on behalf of all other creditors similarly situated, by its attorneys, Matthew G. Koehler, Brown & James, P.C., and for its Class Action Complaint against Engineered Products Industries, L.L.C., a Missouri limited liability company, d/b/a St. Clair Die Casting, and EFR, L.L.C., states:

PARTIES

1. Plaintiff is an Illinois corporation engaged in the business of manufacturing and selling zinc goods in Cook County, Illinois.

2. Defendant, Engineered Products Industries, L.L.C., a Missouri limited liability company, d/b/a St. Clair Die Casting ("EPI"), was engaged in the zinc die casting and aluminum die casting business at 225 Industrial Park Drive, St. Clair, Missouri.

3. On information and belief, Defendant EFR, L.L.C. ("EFR") is a member of EPI and the manager of EPI. Upon information and belief, EFR's member is Edward F. Ryan, who is a citizen and resident of Missouri.

JURISDICTION AND VENUE

5. Subject matter jurisdiction is based on diversity of citizenship as plaintiff and defendants are citizens of different states and the amount in controversy exceeds $75,000 exclusive of interest and costs.

6. This Court has personal jurisdiction for EFR because its member, Edward Ryan, is a citizen and resident of Missouri.

7. This Court has personal jurisdiction for EPI because it is a Missouri limited liability company that operates from St. Clair, Missouri. EPI's members are:

a. Paul H. Hatfield, equitable owner of the Paul H. Hatfield Revocable Trust U/T/I February 11, 1992. Mr. Hatfield is a citizen and resident of Missouri;

b. EFR, L.L.C., a Missouri limited liability company.

i. Upon information and belief, EFR, L.L.C.'s member is Edward F. Ryan, who is a citizen and resident of Missouri;

c. The Ryan Family Limited Partnership, a Missouri limited partnership.

i. The general partner of The Ryan Family Limited Partnership is The Edward F. Ryan Revocable Living Trust, u/t/a dated 9-20-90.

1. Upon information and belief, Edward F. Ryan is the equitable owner of The Edward F. Ryan Revocable Living Trust, u/t/a dated 9-20-90, and a citizen and resident of Missouri.

ii. Upon information and belief the limited partners of The Ryan Family Limited Partnership is Jane Doe 1, who is a citizen and resident of Missouri;

d. Robert G. Potter, who is a citizen and resident of Florida;

e. The Robert G. Potter Family Trust U/T/I Dated September 24, 2004. Upon information and belief, Robert G. Potter is the equitable owner of the Robert G. Potter Family Trust U/T/I Dated September 24, 2004. Again, Mr. Robert G. Potter is a citizen and resident of Florida;

f. Fair Oaks Investments, LLC, which is a Missouri limited liability company.

i. Upon information and belief, Fair Oaks Investments, LLC's member is Andrew G. Smith, who is a citizen and resident of Missouri;

g. H. Bart Baker, who is a citizen and resident of Missouri;

h. The Walter R. Lamkin Revocable Trust U/T/I Dated July 16, 2004.

> i. Upon information and belief, Mr. Walter R. Lamkin is the equitable owner of the Walter R. Lamkin Revocable Trust U/T/I Dated July 16, 2004, and a citizen and resident of Missouri;

i. The Andrew and Margaret Smith Family Limited Partnership, which is a Missouri limited partnership.

> i. The general partner of The Andrew and Margaret Smith Family Limited Partnership is The Margaret C. Smith Revocable Living Trust, u/t/a dated 2-15-90.
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> > 1. Upon information and belief, the equitable owner of The Margaret C. Smith Revocable Living Trust, u/t/a dated 2-15-90, is Ms. Margaret C. Smith, who is a citizen and resident of Missouri.

ii. Upon information and belief, the limited partner of The Andrew and Margaret Family Limited Partnership is Jane Doe 2, who is a citizen and resident of Missouri;

j. Renaissance Resource, LLC, which is a Missouri limited liability company.

i. Upon information and belief, the member of Renaissance Resource, LLC, is Leigh Ewell, who is a citizen of Missouri.

k. G. Strauss Enterprises, LLC, a Florida limited liability company.

i. Upon information and belief, the member of G. Strauss Enterprises, LLC, is Gerhard H. Strauss, who is a citizen and resident of Florida;

l. TGCMFC, LLC, which is a Missouri limited liability company.

i. Upon information and belief, the members of TGCMFC, LLC are:

1. Timothy G. Crowley, who is a citizen and resident of Missouri; and

2. Marilyn F. Crowley, who is a citizen and resident of Missouri;

m. Burt A Wise, who is a citizen and resident of Florida; and

n. B&C Holdings, LLC which is a Missouri limited liability company.

i. Upon information and belief, the member of B&C Holdings, LLC, is Jane Doe 3, who is a citizen and resident of Missouri.

9. Venue is appropriate in the Eastern Division of the U.S. District Court, Eastern District of Missouri, because at all material times EPI conducted business within the Eastern Division.

COUNT I

Breach of Contract (EPI)

10. For Paragraph 10, Imperial realleges and incorporates Paragraphs 1 - 9 as if fully stated herein.

11. On the following days EPI orally contracted with Imperial to purchase zinc goods that total $534,419.82:

a. July 8, 2013,
b. July 15, 2013,
c. July 18, 2013,
d. July 29, 2013,
e. July 30, 2013,
f. August 5, 2013,
g. August 13, 2013,
h. August 14, 2013,
i. August 22, 2013,
J. August 26, 2013,
k. September 10, 2013,
l. September 30, 2013,
m. November 6, 2013,
n. November 22, 2013.

12. Pursuant to the contracts, Imperial manufactured zinc goods on EPI's behalf totaling $534,419.82.

13. Imperial manufactured and delivered the zinc goods to EPI.

14. EPI accepted the zinc goods manufactured by Imperial, thereby ratifying the contracts of purchase.

15. EPI consumed and otherwise used the goods in the manufacturing process.

16. As a result of the acceptance of the goods that were manufactured for and shipped to EPI, and after all credits and setoffs were applied by Imperial, EPI owes Imperial $509,857.28 for the zinc goods it contracted to purchase from Imperial. EPI breached its contracts with Imperial by failing to pay for the zinc goods.

17. Imperial fulfilled any and all of its obligations under its contracts with EPI.

18. As a result of EPI's breaches of contract, Imperial incurred damages in an amount of at least $509,857.28.

19. As a further result of EPI's breaches of contract, Imperial also sustained incidental damages in an amount to be proved at trial.

20. Imperial demanded payment from EPI of the $509,857.28.

21. EPI admitted the debt, but refused, and continues to refuse, to remit payment. True and correct copies of plaintiff's statement of account and invoices are attached as "Group Exhibit 1."

22. Imperial also claims prejudgment interest, pursuant to § 408.020 RSMo., of 9% per year, for EPI's vexatious and unreasonable delay of payment.

WHEREFORE, Imperial Zinc Corp., an Illinois corporation, requests judgment in its favor and against Engineered Products Industries, L.L.C., a Missouri limited liability company, d/b/a St. Clair Die Casting, in an amount of at least $509,857.28, plus incidental damages, pre-judgment interest, costs, and such other or additional relief as the Court deems proper and just.

COUNT II

Breach of Trust Relationship – Class Action
(EFR)

23. For Paragraph 23, Imperial realleges and incorporates Paragraphs 1 - 22 as if fully stated herein.

24. Imperial brings this claim as a Class Action pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of all similarly situated creditors of EPI.

25. The Plaintiff Class consists of Imperial and all other creditors of EPI who were owed money by EPI at the time that it ceased doing business and whose claims against EPI on those debts have not been paid, abandoned, or otherwise released.

26. On information and belief, the Plaintiff Class is so numerous that joinder of all members is impracticable, and there are more than 40 members of the Plaintiff Class.

27. There are questions of law and fact common to the Plaintiff Class that predominate over any questions affecting only individual class members. The predominant question is whether EPI continued to do business and incur business debt when EPI was insolvent by, for example, purchasing goods and services which EPI's management, including EFR, knew or should have known could not be paid for because of the insolvency.

28. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff has retained counsel experienced in handling class actions and claims involving insolvent businesses.

29. A class action is an appropriate method for the fair and efficient adjudication of this controversy. The interest of class members in individually controlling the prosecution of separate claims against Defendant EFR is small because any of the claims they may have against that Defendant can only be brought as part of a class action pursuant to *Drummond Co. v. St. Louis Coke & Foundry Supply Co.*, 181 S.W.3d 99 (Mo. Ct. App. 2005), and *Imperial Zinc Corp. v. Engineered Products Industries, L.L.C.*, 2015 U.S. Dist. LEXIS 159187 (E.D. Mo. Nov. 25, 2015).

30. On or about January 1, 2013, EPI's manager was EFR. At all relevant times herein, EFR served the roles of officer and director of EPI.

31. On or about January 1, 2013, EPI was insolvent as its short-term and long-term debts and liabilities exceeded its assets.

32. EFR knew that EPI was insolvent on or around January 1, 2013, due to knowledge of audited consolidated financial statements for EPI and its subsidiary, which was for the year end of December 31, 2012.

33. On or about July 7, 2013, EPI continued to be insolvent as its short-term and long-term debts and liabilities exceeded its assets.

34. EFR knew that EPI continued to be insolvent on or around July 7, 2013, due to EPI's internal financial records.

35. Due to its continued insolvency, on July 7, 2013, EPI was not a going concern and was incapable of doing business.

36. Under Missouri law, because EPI was not a going concern on July 7, 2013, it was effectively a *de facto* dissolved limited liability company, which caused its manager, EFR, to hold a trustee-like position for the equal benefit of all of EPI's creditors in the Plaintiff Class.

37. On or after July 7, 20l3, despite being aware that EPI was insolvent, EFR failed to cause EPI to wind-up its affairs and instead, allowed EPI to order more zinc goods from Imperial and, on information and belief, to engage in other business transactions with other creditors of EPI that comprise the Plaintiff Class.

38. EFR breached its trustee-like duty to the Plaintiff Class as creditors of EPI by causing or allowing EPI's agents to order more goods and services from the Plaintiff Class instead of winding-up EPI's affairs for the equal benefit of all creditors.

39. As a direct result of EFR's breach of its trustee-like duty, Imperial sustained damages, including, but not limited to, at least $509,857.28 for zinc goods sold and delivered after EPI's insolvency, plus incidental damages, and the other members of the Plaintiff Class sustained additional damages in an amount to be determined by the Court.

WHEREFORE, Imperial Zinc Corp., an Illinois corporation, requests judgment in its favor and in favor of the Plaintiff Class, and against Defendant, EFR, L.L.C., for their damages, plus pre-judgment interest, costs, and such other or additional relief as the Court deems proper and just.

COUNT III

Breach of Fiduciary Duty – Class Action
(EFR)

40. For Paragraph 40, Imperial realleges and incorporates Paragraphs 1 - 39 as if fully stated herein.

41. Pursuant to Missouri common law, EFR owed a fiduciary duty to Imperial and the other members of the Plaintiff Class when EPI was insolvent and no longer a going concern.

42. Under Missouri law, EFR was duty-bound and entrusted to ensure that EPI did not continue to order zinc goods from Imperial or to engage in other business transactions with EPI's other creditors. Instead, EFR was required to wind-up EPI's affairs for the benefit of all of EPI's creditors.

43. EFR breached its duty to Imperial and the Plaintiff Class by causing or allowing agents of EPI to order zinc goods from Imperial and to engage in other business

transactions with EPI's other creditors after EPI was insolvent and ceased to be a going concern.

44. As a direct result of EFR's breach of its fiduciary duty, Imperial sustained damages, including, but not limited to, at least $509,857.28 for zinc goods sold and delivered after EPI's insolvency, plus incidental damages, and the other members of the Plaintiff Class sustained additional damages in an amount to be determined by the Court

WHEREFORE, Imperial Zinc Corp., an Illinois corporation, requests judgment in its favor and in favor of the Plaintiff Class, and against defendant, EFR, L.L.C., for their damages, plus pre-judgment interest, costs, and such other or additional relief as the Court deems proper and just.

COUNT IV

Action on Account (EPI)

45. For Paragraph 44, Imperial realleges and incorporates Paragraphs 1 - 44 as if fully stated herein.

46. On July 8, July 15, July 18, July 29, July 30, August 5, August 13, August 14, August 22, August 26, September 10, September 30, November 6, and November 22, 2013, EPI orally contracted with Imperial to purchase zinc goods in the amount of $534,419.82.

47. Pursuant to EPI's requests, Imperial manufactured zinc goods on EPI's behalf.

48. Imperial then delivered the zinc goods to EPI.

49. Imperial charged EPI $534,419.82 for the zinc goods manufactured for, and delivered to, EPI.

50. The reasonable cost for the zinc goods manufactured for, and delivered to, EPI was $534,419.82.

51. EPI never objected to any of the invoices, statements of account of demands for payment.

52. Instead, on various occasions, EPI admitted the debt.

53. After all credits and setoffs were applied by Imperial, Imperial has been damaged in an amount in excess of $509,857.28, as a result of EPI's failure to pay debts due and owing from Imperial's manufacture and delivery of the zinc goods.

54. Imperial also claims prejudgment interest, pursuant to § 408.020 RSMo., of 9% per year, for EPI's vexatious and unreasonable delay of payment.

WHEREFORE, Imperial Zinc Corp., an Illinois corporation, requests judgment in its favor and against defendant, Engineered Products Industries, L.L.C., a Missouri limited liability company, d/b/a St. Clair Die Casting, in an amount in excess of $509.857.28. plus incidental damages, pre-judgment interest, costs, and such other or additional relief as the Court deems proper and just.

Jury Trial Requested

Plaintiff requests a jury trial for its causes of action against Defendants.

Respectfully submitted,

BROWN & JAMES, P.C.

/s/ Matthew Koehler

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